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12 BLOCKBUSTER INC.

13 UNITED STATES DISTRICT COURT

14 NORTHERN DISTRICT OF CALIFORNIA

15 NETFLIX, INC., a Delaware corporation,

16 Plaintiff,

17 v.

18 BLOCKBUSTER, INC., a Delaware
corporation, DOES 1-50,

19 Defendant.

20 AND RELATED COUNTERCLAIMS
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Case No. C 06 2361 WHA (JCS)

DECLARATION OF TONY D. CHEN

Hearing Date: TBD
Time: 9:30 A.M.
Courtroom: A, 15th Floor
Magistrate Judge: Joseph C. Spero
Complaint Filed: April 4, 2006

DECLARATION OF TONY D. CHEN

LA/40378487.3/3006338-0000325413

1 I, Tony D. Chen, declare as follows:

2 I am a partner in the law firm of Alschuler Grossman LLP, the attorneys of record herein
3 for Defendant and Counterclaimant Blockbuster Inc. ("Blockbuster") in this action, and have
4 personal knowledge of each and all of the facts stated in this declaration. If called to testify as a
5 witness, I could and would do so competently.

6 1. Have you ever expressed any opinion on the validity of either the '450 patent or
7 '381 patent at issue in this case?

8 **Answer: No, I have not expressed an opinion of counsel but have been involved in**
9 **defending the litigation with respect to invalidity issues.**

- 10 • How often?
11 • When?
12 • To whom?
13 • Was that opinion expressed orally or in writing?
14 • If in writing, was the writing preserved?

15 2. Have you ever mentioned the opinion letter written by Baker & Botts as to the
16 validity of the '450 patent to anyone at Blockbuster?

17 **Answer: Yes**

- 18 • How often?
19 **Answer: at least twice**
20 • When?
21 **Answer: In or about April 2006 and May 2006**
22 • To whom?
23 **Answer: Judy Norris and Bryan Stevenson**
24 • Was that comment expressed orally or in writing?
25 **Answer: Orally**
26 • If in writing, was the writing preserved?

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1 3. Have you mentioned the opinion letter written by Blakely Sokoloff Taylor &
2 Zafman as to the validity of the '381 patent to anyone at Blockbuster?

3 **Answer: No**

- 4 • How often?
5 • When?
6 • To whom?
7 • Was that comment expressed orally or in writing?
8 • If in writing, was the writing preserved?

9 4. Have you ever discussed with anyone at Blockbuster the general subject matter of
10 the validity of the '381 patent?

11 **Answer: Yes**

- 12 • How often?
13 **Answer: from time to time throughout the course of the litigation**
14 • When?
15 **Answer: from time to time throughout the course of the litigation**
16 • To whom?
17 **Answer: Judy Norris and Bryan Stevenson**
18 • Was that discussion oral or in writing?
19 **Answer: Oral**
20 • If in writing, was the writing preserved?

21 5. Have you ever discussed with anyone at Blockbuster the general subject matter of
22 the validity of the '450 patent?

23 **Answer: Yes**

- 24 • How often?
25 **Answer: from time to time throughout the course of the litigation**
26 • When?
27 **Answer: from time to time throughout the course of the litigation**
28

1 • To whom?

2 **Answer:** Judy Norris and Bryan Stevenson

3 • Was that discussion oral or in writing?

4 **Answer:** Oral

5 • If in writing, was the writing preserved?

6 6. Have you made any comment to anyone at Blockbuster about the evidence
7 concerning the validity of the '381 patent?

8 **Answer:** Yes

9 • How often?

10 **Answer:** from time to time throughout the litigation

11 • When?

12 **Answer:** from time to time throughout the litigation

13 • To whom?

14 **Answer:** Judy Norris and Bryan Stevenson

15 • Was that comment made orally or in writing?

16 **Answer:** Oral

17 • If in writing, was the writing preserved?

18 7. Have you made any comment to anyone at Blockbuster about the evidence
19 concerning the validity of the '450 patent?

20 **Answer:** Yes

21 • How often?

22 **Answer:** from time to time throughout the litigation

23 • When?

24 **Answer:** from time to time throughout the litigation

25 • To whom?

26 **Answer:** Judy Norris and Bryan Stevenson

27 • Was that comment made orally or in writing?

28

1 **Answer: Oral**

2 • If in writing, was the writing preserved?

3 8. Have you had any communications with anyone in your office commenting on
4 conversations with Blockbuster that in any way related to the validity of the '381 patent?

5 **Answer: Yes**

6 • How often?

7 **Answer: from time to time throughout the course of the litigation**

8 • When?

9 **Answer: from time to time throughout the course of the litigation**

10 • To whom?

11 **Answer: Bill O'Brien and Marshall Grossman**

12 • Was that communication oral or in writing?

13 **Answer: Oral**

14 • If in writing, was the writing preserved?

15 9. Have you had any communications with anyone in your office commenting on
16 conversations with Blockbuster that in any way related to the validity of the '450 patent?

17 **Answer: Yes**

18 • How often?

19 **Answer: from time to time throughout the course of the litigation**

20 • When?

21 **Answer: from time to time throughout the course of the litigation**

22 • To whom?

23 **Answer: Bill O'Brien and Marshall Grossman**

24 • Was that communication oral or in writing?

25 **Answer: Oral**

26 • If in writing, was the writing preserved?

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PROOF OF SERVICE

I am over 18 years of age, not a party to this action and employed in the County of Los Angeles, California at 355 South Grand Avenue, Suite 4400, Los Angeles, California 90071-3106. I am readily familiar with the practice of this office for collection and processing via electronic transmission that same day in the ordinary course of business.

Today I served the attached:

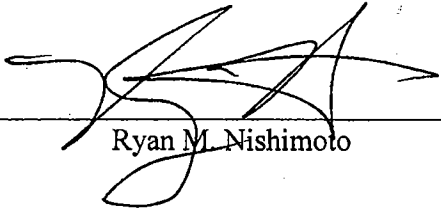
DECLARATION OF TONY D. CHEN

☒ (BY ELECTRONIC TRANSMISSION) This document was transmitted, without exhibits, by electronic transmission from ryan.nishimoto@bingham.com and the transmission was reported as complete and without error. I then caused the transmitting e-mail account to properly issue a report confirming the electronic transmission.

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I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made and that this declaration was executed on April 27, 2007.



Ryan M. Nishimoto